

## **You Can Appeal Most City Decisions! Chances Are You Either Don't Know That Or Can't Afford It**

By Dirk VanderHart

In 2013, the city wanted to charge Rex Burkholder thousands for work he didn't need. Burkholder, a former Metro councillor, says his neighbor's sewer system failed. Rather than isolating the fix, the Bureau of Environmental Services (BES) decided to put a new sewer line down the street.

"They charged myself and my neighbors \$5,000 to help fix the neighbor's sewer across the street," he says.

The city, it turned out, was within its rights to do so. But BES officials were completely wrong when they told Burkholder he had no right to appeal the bureau's decision.

"Citizens have a right to appeal everything," he says. "Even if they're wrong, they still have the right to appeal."

Burkholder eventually pushed his way through to a city appeals officer, but says the process was confused. It was clear to him BES wasn't sure how to proceed.

It's not just the sewer bureau getting this wrong. The city auditor's office, based on Burkholder's complaint, began looking into appeals processes throughout the city and found a litany of unnecessary hurdles citizens can face.

While some bureaus might not outright lie (whether purposefully or not) about a citizen's right to appeal, City Ombudsman Margie Sollinger says officials too often don't inform people they can challenge city dictums. Not only that, but it's prohibitively expensive in many cases to schedule an appearance before a code hearings officer—up to \$1,300, though charges vary. The ombudsman is fond of pointing out that that sum is far more than it costs to file an appeal before the US Supreme Court (\$300).

These hurdles have created a system where city appeals are underused. Appeals processes vary bureau to bureau, but 70 go through the city's Code Hearings Office. Only about a dozen are routinely tapped, Sollinger says. Disadvantaged Portlanders—low-income families, senior citizens, people of color, immigrants—are disproportionately unable to access the process.

So the auditor's office is proposing a solution. In a hearing this afternoon, Portland City Council will consider an ordinance that would rework city code to demand bureaus inform people of their ability to appeal in a timely fashion, and give the Code Hearings Office leeway to penalize bureaus that don't do so. The tweak would also establish an unspecified "nominal filing fee" for appeals that go through the Code Hearings Office—something low enough not to deter people who aren't bringing frivolous claims.

"It is essential to notify people when they have the right to appeal a governmental decision," reads the ordinance. "Without notice, members of the public cannot take advantage of their appeal rights."

Knowing his rights didn't help Burkholder. He says his claims were ultimately decided by a group of BES officials, who told him they had every right to levy the \$5,000 charges.

"All I wanted to do was be able to sit down and actually talk with someone about whether this was fair and right," he says. "I was told, 'We have more lawyers than you, so go ahead and sue us.'"

As it happens, Burkholder did consult a lawyer—who looked at city policy and promptly told Burkholder he didn't stand a chance.

"He said, 'but go ahead, have a good time,'" Burkholder says. "Did I? No!"